



UNITED STATES PATENT AND TRADEMARK OFFICE

fwd

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|------------------------|-------------|----------------------|---------------------|------------------|
| 10/088,061 | 08/12/2002 | Eduardo Casais | 875.0105.U1 (US) | 8518 |
| 29683 | 7590 | 08/23/2007 | EXAMINER | |
| HARRINGTON & SMITH, PC | | | KARIKARI, KWASI | |
| 4 RESEARCH DRIVE | | | ART UNIT | PAPER NUMBER |
| SHELTON, CT 06484-6212 | | | 2617 | |
| MAIL DATE | | DELIVERY MODE | | |
| 08/23/2007 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/088,061 | CASAIS, EDUARDO | |
| | Examiner | Art Unit | |
| | Kwasi Karikari | 2617 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05/29/2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,2,6-8,11,12,14-16,20-23 and 25-45 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,2,6-8,11,12,14-16,20-23 and 25-45 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1,2,6-8,11,12,14-16,20-23 and 25-45 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1,2,6-8,11,12,14-16,20-23 and 25-45 are rejected under U.S.C. 103(a) as being unpatentable over Birgerson (U.S 6,138,009), (hereinafter Birgerson), in view of Levy et al., (U.S 6,505,160 B1), (hereinafter Levy).

Regarding claims 1, 25 and 42, Birgerson discloses a system for supplying data in electronic form (= application/software download, see col. 7, lines 9-54 and Fig. 1) comprising;

a mobile terminal (= MS 10) and a supplying terminal (= BS 20), the supplying terminal comprising a first communication transceiver configured to receive data (see col. 8, lines 11-47 and Fig. 1, items 4) from at least one data server (= item 5 or 6, see Fig. 1) and second communications transceiver configured to send at least part of the data to the mobile terminal over a wireless connection (see path for item 2, Fig. 1) wherein the first communication receiver is configured to obtain electronic data (= software) from the at least one data server (= item 5 or 6) by communication over a wireless network
(= internet or intranets, see col. 7, lines 9-54); but fails to discloses that the wireless connection is a Low Power Radio Frequency (LPRF) connection.

Levy mentions that the path from a server to a communication application may include more hops through a wireless communication protocols such as Bluetooth (see col. 5, lines 37-66; whereby the Bluetooth path is being associated with the "Low Power Radio Frequency (LPRF) connection).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 2, as recited in claim 1, Birgerson further discloses the system in which there is a plurality of data servers (see items 5 and 6 in Fig. 1) to supply electronic data to the supplying terminal (see item 20 in Fig. 1)

Art Unit: 2617

Regarding claim 6, as recited in claim 1, Levy discloses, the system in which the supplying terminal is a vending machine which supplies electronic data in exchange for a monetary payment (see col. 13, lines 49-49).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 7, as recited in claim 6, Levy discloses, the system in which the supplying terminal and mobile terminal exchange information necessary to enable payment to be made for the electronic data supplied to the mobile terminal (see col. 6, lines 29-59 and col. 13, lines 49-49).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 8, as recited in claim 1, Levy discloses, the system in which the mobile terminal and the supplying terminal communicate by the Wireless Application Protocol (WAP) (see col. 6, lines 43-59)

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a

commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 11, as recited in claim 1, Birgerson further discloses the system in which the wireless network is provided by a cellular network (see col. 11, lines 53-65).

Regarding claim 12, as recited in claim 1, Levy discloses, the system, in which the wireless connection is a connection between the mobile station and the supplying terminal in a pico-cell (= path from a server to a communication application may include more hops through a wireless communication protocols such as Bluetooth (see col. 5, lines 37-66; whereby the Bluetooth path is being associated with the "pico-cell" connection).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 14, as recited in claim 1, Birgerson further discloses the system in which the wireless network obtains the data from a second network which is a wired network (= internet and intranet network, see col. 7, lines 9-54).

Regarding claim 15, as recited in claim 1, Birgerson further discloses the system in which the wireless network obtains the data from the Internet via a gateway (= internet and intranet network, see col. 7, lines 9-54).

Regarding claim 16, as recited in claim 1, Levy discloses, the system, in which the data transmitted to the mobile terminal from the supplying terminal is only part of the data transmitted to the supplying terminal by the or each data server (see col. 14, lines 43-58).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 20, as recited in claim 1, Levy discloses, the system, in which the price at which the electronic data is sold is determined by a person controlling supply of that electronic data to mobile terminals (see col. 6, lines 43-67).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Art Unit: 2617

Regarding claim 21, as recited in claim 1, Birgerson further discloses the system in which the mobile terminal is a mobile telephone (= cellular telephone 10, see col. 7, lines 9-43).

Regarding claim 22, as recited in claim 1, Birgerson further discloses the system in which the mobile terminal is selected from a group consisting of game playing devices, portable audio players, portable video players, personal digital assistants and smart telephones (= cellular telephone 10, see col. 7, lines 9-43).

Regarding claim 23, as recited in claim 1, Levy discloses, the system, in which the data in electronic form is uploaded to the supplying terminal in an operation that is independent from a request being made for the data in electronic form by the mobile terminal (see col. 14, lines 35-58)

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 26, Birgerson discloses a supplying terminal (BS 20) for supplying data in electronic form (software) comprising;

a first communication transceiver (see col. 8, lines 11-47 and Fig. 1, items 4) configured to receive data from at least one data server over a wireless network

(= internet or intranets, see col. 7, lines 9-54) and second communications transceiver (see item 2, Fig. 1) configured to send at least part of the data to a mobile terminal (= MS 10) over a wireless connection (see path for item 2, Fig. 1); but fails to discloses that the wireless connection is a Low Power Radio Frequency (LPRF) connection.

Levy mentions that the path from a server to a communication application may include more hops through a wireless communication protocols such as Bluetooth (see col. 5, lines 37-66; whereby the Bluetooth path is being associated with the "Low Power Radio Frequency (LPRF) connection).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 27, as recited in claim 26, Birgerson further disloses the supplying terminal further comprising at least one controller configured to cause the supplying terminal to act as a proxy between the mobile terminal and the at least one data server (see BS 20 in Fig. 1).

Regarding claim 28, as recited in claim 26, Levy discloses, the supplying terminal further comprising at least one controller configured to cause the transfer of data between the at least one data server and the supplying terminal to be carried out securely (see col. 6, lines 43-59).

Art Unit: 2617

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 29, as recited in claim 26, Levy discloses, the supplying terminal further comprising at least one controller configured to cause the transfer of data between the supplying terminal and the mobile terminal to be carried out securely (see col. 6, lines 43-59).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 30, as recited in claim 26, Levy discloses, the supplying terminal further comprising at least one controller configured to send the at least part of the data in response to confirmation of a monetary payment being made corresponding to the at least part of the data (see col. 6, lines 29-59 and col. 13, lines 49-49).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 31, as recited in claim 30, Levy discloses, the supplying terminal further comprising at least one controller configured to exchange information with the mobile terminal necessary to enable the monetary payment to be made (see col. 6, lines 29-59 and col. 13, lines 49-49).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 32, as recited in claim 26, Levy discloses, the supplying terminal further comprising at least one controller configured to cause the mobile terminal and the supplying terminal to communicate using the Wireless Application Protocol (WAP)(see col. 6, lines 43-59).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 33, as recited in claim 26, Birgerson further disloses the supplying terminal in which the first communications transceiver is configured to receive data over a cellular wireless network (see col. 11, lines 53-65).

Regarding claim 34, as recited in claim 26, Levy discloses, the supplying terminal further comprising at least one controller and wherein the at least one controller is configured to send a portion of the received data to the mobile terminal, and wherein the portion of the received data is only part of the data received from the at least one data server (see col. 14, lines 43-58).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 35, as recited in claim 34, Levy discloses, the supplying terminal in which the at least one controller is configured to allow a user of the mobile terminal to determine the portion of the data which is sent to the mobile terminal (see col. 14, lines 43-58).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 36, as recited in claim 26, Levy discloses, the supplying terminal further comprising at least one controller, and in which at least one controller is configured to allow a person controlling operation of the supplying terminal to determine the electronic data obtained from at least one data server (see col. 7, lines 29-38 and

col. 12, lines 11-36).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 37, as recited in claim 36, Levy discloses, the supplying terminal in which the at least one controller is configured to allow the person controlling operation of the supplying terminal to determine a configuration of the electronic data within the supplying terminal (see col. 6, lines 43-67).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 38, as recited in claim 36, Levy discloses, the supplying terminal in which the at least one controller is configured to allow the person controlling supply of the electronic data to mobile terminals to determine the price at which the electronic data is sold (see col. 6, lines 43-67).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a

Art Unit: 2617

commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 39, as recited in claim 26, Birgerson further discloses the supplying terminal in which the mobile terminal is one of a mobile telephone, game playing device, portable audio player, portable video player, personal digital assistant, and a telephones (= cellular telephone 10, see col. 7, lines 9-43).

Regarding claim 40, as recited in claim 26, Levy discloses, the system, further comprising at least one controller and wherein the at least one controller is configured to allow the data in electronic form to be uploaded to the supplying terminal in an operation that is independent from a request being made for the data in electronic form by the mobile terminal (see col. 14, lines 35-58)

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 41, as recited in claim 26, Levy discloses, the system, further comprising at least one controller configured to send, using the wireless connection, information to the mobile terminal about content offered for sale by the supplying terminal, the content comprising at least one item, the at least one controller further

Art Unit: 2617

configured to send the at least part of the data in response to a request from the mobile terminal for purchase of a selected one or more of the at least one items (see col. 12, lines 11-36 and col. 13., lines 49-59).

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 43, as recited in claim 42, Levy discloses, the method wherein: the data comprises at least one item; the method includes storing the data as part of content provided for sale; the method includes providing using the wireless connection information to a mobile terminal about the content offered; and sending further comprises in response to a request from the mobile terminal for purchase of a selected one or more items in the content, sending the selected one or more items to the mobile terminal (see col. 12, lines 11-36; col. 13., lines 49-59 and col. 14, lines 35-58)

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 44, as recited in claim 43 Levy discloses, the method wherein sending the selected one or more items to the mobile terminal is performed in exchange

for a monetary payment (see col. 12, lines 11-36; col. 13., lines 49-59 and col. 14, lines 35-58)

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Regarding claim 45, as recited in claim 44, Levy discloses, the method further comprising exchanging, using at least the wireless connection, information with the mobile terminal necessary to enable the monetary payment to be made (see col. 12, lines 11-36; col. 13., lines 49-59 and col. 14, lines 35-58)

It would therefore have been obvious to one of the ordinary skill in the art to combine the teaching of Levy with the system of Birgerson for the benefit of achieving a commercial system that include music downloading (see Levy; col. 6, lines 29-59 and col. 13, lines 49-59).

Conclusion

3. **Examiner's Note:** Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully

Art Unit: 2617

consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

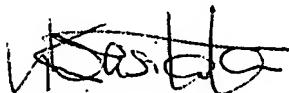
Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kwasi Karikari whose telephone number is 571-272-8566. The examiner can normally be reached on M-F (8 am - 4pm). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, *Rafael Pérez-Gutiérrez* can be reached on 571-272-7915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8566. Information regarding the status of an application may be obtained from the

Art Unit: 2617

Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Kwasi Karikari
Patent Examiner.

08/20/2007



Rafael Perez-Gutierrez
Supervisory Patent Examiner
Technology Center 2600
Art Unit 2617
08/20/07